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No. 93-510

In The

Supreme Court of the United States

October Term, 1993

AETNA LIFE INSURANCE COMPANY and
AETNA HEALTH MANAGEMENT,

Petitioners,

v.

STUART CIRCLE HOSPITAL CORPORATION,

Respondent.

MOTION FOR LEAVE TO FILE AND BRIEF OF THE CONNECTICUT BUSINESS AND INDUSTRY ASSOCIATION AS AMICUS CURIAE IN SUPPORT OF PETITIONERS

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Pursuant to Rule 37.2 of the Rules of this Court, the Connecticut Business and Industry Association ("CBIA") respectfully moves for leave to file the accompanying brief amicus curiae in this case. Counsel for the Petitioners has consented to the filing of a brief, amicus curia, but counsel for the Respondent has refused such consent. Petitioner moves for leave to file the accompanying brief notwithstanding such refusal.

Interest of Amicus

The Connecticut Business and Industry Association is the largest business and trade association in the State of Connecticut having approximately 7,000 members who employ a total work force of over 700,000 employees. CBIA presents the view of

its members on public policy and legal issues to legislative and judicial authorities.

Petitioner's request Certiorari to overturn a decision of the United States Court of Appeals for the Fourth Circuit. CBIA agrees with the Petitioner that the decision of the Court of Appeals should be overturned.

CBIA's principal interest lies in having this Court limit the scope of the ERISA[1] saving clause contained in 29 U.S.C. §1144(b)(2)(A) so as not to make the general principal of federal preemption to plans subject to ERISA meaningless when applied to matters concerning group health insurance. Such state laws, if not limited in

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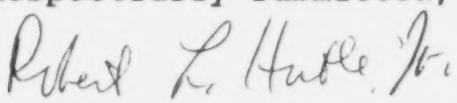
1 The Employee Retirement Security Act of 1974, as amended (ERISA), codified at 29 U.S.C. §1001, et seq.

scope by the application of federal preemption, force employers such as those represented by CBIA to offer more costly group health insurance plans solely because, by law, such plans must include inefficient providers of medical service that otherwise would have been unable to exist in the competitive marketplace.

Legislation similar to that adopted by Virginia, and which is at issue in this case, has been introduced in the Connecticut legislature and CBIA has opposed the enactment of such legislation. CBIA understands that similar legislation may be introduced in other states and this trend affects employers such as those represented by CBIA, and most importantly such member-participants' employees.

For all of the foregoing reasons, the Connecticut Business and Industry Association respectfully moves for leave to file the accompanying brief as amicus curiae.

Respectfully submitted,



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October, 1993

CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of October, 1993, I caused a true and correct copy of the foregoing MOTION FOR LEAVE TO FILE AND BRIEF OF THE CONNECTICUT BUSINESS AND INDUSTRY ASSOCIATION AS AMICUS CURIAE IN SUPPORT OF PETITIONERS to be served by first class mail, postage prepaid, upon:

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Other Authorities:

Report to Health Insurance Association of America, Cost Analysis of State Legislative Mandates on Six Managed Health Care Practices. Prepared by The Wyatt Company, June 7, 1991 4

United States of America, Federal Trade Commission, Letter of Michael O. Wise, Acting Director, Addressed to the Honorable Joseph P. Mazurek, Attorney General of the State of Montana . . . 5

INTEREST OF THE AMICUS CURIAE

The Connecticut Business and Industry Association (CBIA) is the largest business and trade association in the State of Connecticut having approximately 7,000 members who employ a total work force of over 700,000 employees. CBIA presents the view of its members on public policy and legal issues to legislative and judicial authorities.

REASONS FOR GRANTING THE WRIT

Summary of Argument.

CBIA believes that the decision of the Fourth Circuit Court in this matter, if not overturned, may result in the adoption in Connecticut and other states of statutes similar to the statute at issue in this case which will force employers such as those

represented by CBIA to be offered group health insurance plans which are more costly simply because inefficient providers are required under state law to be admitted into the service provider network. This could not be an intended result of the ERISA statute.

Argument.

This brief does not deal with the legal intricacies of the ERISA preemption rules which are well stated in the Petitioner's brief. By this brief CBIA merely seeks to bring to the Court's attention the economic implications which may result from the affirmance of the decision of the Court of Appeals in this matter.

CBIA represents many employers who provide group insurance coverage to their employees. In many instances employers utilize group health plans

which contract with service providers for fees which would not ordinarily be obtainable on a single employer or even small multi-employer group basis. The economies of scale relating to administrative costs and the enhanced bargaining power in the marketplace of these large-scale groups allow them to negotiate with service providers for reduced rates.

Those reduced rate services contracts are the basis for the group insurer's ability to control costs and, therefore, the premium which must be charged to employers. Those premiums are frequently charged to a member's employees via payroll deduction.

In turn, those providers who join with the group insurer by offering reduced rate services are able to maximize their profits through

increased volume and the efficient delivery of medical services. Only through the limitation on the number of service providers in any one geographic area may the volume be sufficient to experience the economies of scale necessary to keep the unit cost of the service supplier down to a profitable level taking into account the fee which the group insurer is willing to pay for such service.

In support of its position, CBIA makes reference to a study by the Wyatt Company dated June 7, 1991 entitled Report to Health Insurance Association of America, Cost Analysis of State Legislative Mandate on Six Managed Health Care Practices which concludes that enactment of "any willing provider" statutes such as the one presently before this Court serves to

increase administrative costs as the size of the provider network increases and that such increases may be in the range of 170% above the baseline cost of a limited network system.

Also, CBIA makes reference to a letter of Mr. Michael O. Wise, Acting Director of the Federal Trade Commission, dated February 4, 1993 and addressed to the Honorable Joseph P. Mazurek, Attorney General of the State of Montana reproduced at Appendix E of the Petitioner's Petition for Writ of Certiorari. That letter summarizes the findings of a study authorized by the Commission and concludes that the Montana "any willing provider law", (Mont Code Ann., Title 33 Ch. 22 Part 17 (1991)), discourages competition among providers, and in turn raises prices to consumers and unnecessarily

restricts consumer choice in prepaid health care, without providing any substantial public benefit.

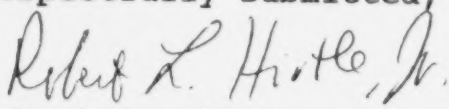
Given the public demand to control the spiraling costs of health care in this country, CBIA's member employers believe the marketplace should be left free of state legislation so as to allow employers and employees to experiment with different types of health care delivery systems. The imposition of state controls such as an "any willing provider" statute, which will have the effect of increasing the costs of such systems, is inconsistent with such a goal. The absence of a federal rule in this area coupled with a finding of preemption will ensure that the marketplace will be allowed to develop the most efficient and lowest

price health insurance plans. For that reason, the decision of the court below should be reversed.

Conclusion.

For the reasons set forth above, CBIA respectfully requests that this Court grant the petition for Writ of Certiorari and overturn the decision of the Fourth Circuit Court of Appeals in this matter.

Respectfully submitted,



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